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Attorney for  
Julio Cesar Viera-Chirinos

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,  
Plaintiff,

v.

JULIO CESAR VIERA-CHIRINOS,  
Defendant.

Case No. CR-19-0637 WHA

**SENTENCING MEMORANDUM**

Date: December 18, 2019

Time: 1:30pm

Courtroom: The Hon. Judge Charles R. Breyer

Defendant, Julio Cesar Viera-Chirinos, through his attorney Karen McConville, submits this Sentencing Memorandum for the court's consideration in connection with Mr. Viera-Chirinos sentencing. Defendant requests that the court impose a sentence of time served.

To support this request, defendant submits argument and authority to support his objections to the Sentencing Guidelines calculations in the Presentence Report. Defendant also provides the court with a history of Mr. Viera Chirinos's life, which is included in the argument regarding the factors indicating that a below guidelines sentence is appropriate under 8 U.S.C. section 3553.

1 In addition, Defendant submits a statement to the court written by Mr. Viera-Chirinos  
2 personally. In that statement, Mr. Viera-Chirinos expresses remorse for his conduct. Mr. Viera-  
3 Chirinos' personal statement to the court is attached as Exhibit A. Defendant also submits family  
4 photos attached as Exhibit B.

5  
6 **1. INTRODUCTION**

7 Mr. Viera-Chirinos has reviewed the Presentence Report ["PSR"] and has objections to its  
8 content and the imprisonment recommendation of 12 months and one day.

9 Mr. Viera-Chirinos disagrees with the Sentencing Guidelines calculations in the PSR and,  
10 for the purposes of this memorandum, highlights the objections which erroneously lead to a total  
11 offense level for guideline purposes of 13. Additionally, Mr. Viera-Chirinos argues that a  
12 downward variance is appropriate under 8 U.S.C. section 3553.

13  
14 **2. OBJECTIONS TO THE GUIDELINE CALCULATIONS**

15 Mr. Viera-Chirinos objects to the probation officer's assessment that he does not qualify  
16 for any role adjustments and the conclusion he was not substantially less culpable than his  
17 codefendants. *PSR* ¶12. The Probation Officer's conclusion ignores that Mr. Viera-Chirinos is the  
18 exception in this case. He is the only defendant charged in Count 3, a lesser charge in comparison  
19 to the charges faced by the other codefendants, who face mandatory minimum sentences.

20 Mr. Viera-Chirinos was found in personal possession of 0.3 grams of cocaine. In another  
21 individuals' bedroom of his home the heroin was located. Other codefendants in this case were  
22 found in possession of large quantities of drugs. Specifically, a residence which codefendants  
23 Eduardo Viera-Chirinos and Karen Castro Torres frequented, was found to contain approximately  
24 1173.7 grams of methamphetamine, 718.6 grams of heroin, 467 grams of cocaine base, 168.9  
25 grams of cocaine powder and \$73,118 in cash. This indicates a distributor level of culpability.  
26  
27

1 Calls intercepted in discovery also indicate that Mr. Viera-Chirinos codefendants set up  
 2 “redistributor houses” to house multiple individuals where they could deliver drugs. Mr. Viera-  
 3 Chirinos was not involved in this.

4 The PSR indicates that Mr. Viera-Chirinos role in the offense was that of a street-level  
 5 dealer not a distributor. *PSR* ¶12. That is true. In the notes to §3B1.2(3)(A) for mitigating role it  
 6 states:  
 7

8 “A defendant who is accountable under §1B1.3 (Relevant Conduct) *only for the*  
 9 *conduct in which the defendant personally was involved* and who performs a  
 10 limited function in the criminal activity may receive an adjustment under this  
 11 guideline. For example, a defendant who is convicted of a drug trafficking offense,  
 12 whose *participation in that offense was limited to transporting or storing drugs*  
 13 *and who is accountable under §1B1.3 only for the quantity of drugs the*  
 14 *defendant personally transported or stored* may receive an adjustment under this  
 15 guideline.”

16 (*Emphasis Added*)

17 Mr. Viera-Chirinos fits the definition of mitigating role as a street-level dealer. He  
 18 performed a limited function in the criminal activity in storing drugs at his residence and is only  
 19 accountable for the quantity of drugs he personally stored. Furthermore, he fits the role of  
 20 minimal participant:  
 21

22 “Minimal Participant.—Subsection (a) applies to a defendant described in  
 23 Application Note 3(A) who plays a minimal role in the criminal activity. It is  
 24 intended to cover defendants who are plainly among the least culpable of those  
 25 involved in the conduct of a group. Under this provision, *the defendant's lack of*  
 26 *knowledge or understanding of the scope and structure of the enterprise and of*  
 27 *the activities of others is indicative of a role as minimal participant.*”

28 §3B1.2 Note 4, (*emphasis added*).

Mr. Viera-Chirinos did not know of the wider conspiracy being spearheaded by his  
 codefendants. Particularly so, as he was not on speaking terms with his brother, Eduardo Viera-  
 Chirinos, and thus could not have known of the scope and nature of the Drug Trafficking

Organization (DTO) law enforcement were investigating as it pertained to him and the other codefendants charged.

### 3. GUIDELINE CALCULATIONS

Based on the above objections the offense level computation would be computed as follows:

a. <u>Base Offense Level</u> : (U.S.S.G. §2D1.1(c)(12))	16
b. <u>Mitigating Role Reduction</u> : (U.S.S.G. §3E1.2(a)	-4
Minimal Participant	
c. <u>Acceptance of Responsibility</u> : U.S.S.G. §3E1.1(b)	-2
d. <u>Adjusted Offense Level</u> :	10
e. <u>Criminal History Category</u> :	I
f. <u>Total Offense Level</u> :	6-12 months

### 4. A SENTENCE NO MORE THAN TIME SERVED IS APPROPRIATE UNDER FACTORS IN 18 U.S.C. § 3553(a).

The factors in 18 U.S.C. section 3553(a) favor a sentence of time served. As the Supreme Court clarified in *Gall v. United States*, while the Guidelines are the starting point in determining an appropriate sentence, the judge should consider all relevant section 3553(a) factors. *Gall, supra*, 169 L.Ed.2d 445, 457; 128 S.Ct. 586, 596 (2007). “In doing so, [the district judge] may not presume that the Guidelines range is reasonable. He must make an individualized assessment based on the facts presented.” *Ibid.* [internal citations omitted]. The court’s mandate is to “impose a sentence sufficient, but not greater than necessary, to comply with” the basic aim of sentencing. 18. U.S.C. § 3553(a).

Mr. Viera-Chirinos has been in continuous custody since July 31, 2019. *PSR* Pg.1. When he was originally arrested upon the execution of the search warrant on June 5, 2018, he was held

1 in state custody for approximately 30 days before he was released. The state case was  
2 subsequently dismissed in favor of federal prosecution. As of the date of sentencing he will have  
3 served 4 months and 18 days or 140 days in federal custody for a total of approximately 5 months  
4 18 days 170 days. A sentence of time served would squarely fulfill the aims of sentencing.

5 **A. The Nature and Circumstances of the Offense, 18 U.S.C. § 3553(a)(1).**

6  
7 One factor to be considered under section 3553(a) in determining an appropriate sentence is  
8 the nature and circumstances of the offense. Mr. Viera-Chirinos was charged in one count of a  
9 three-count indictment with possession with intent to distribute heroin. He plead guilty to aiding  
10 and abetting another individual's possession of the heroin seized when a search warrant was  
11 executed at his residence on June 5, 2018.

12  
13 Mr. Viera-Chirinos was not charged in nor involved in the activities of his co-defendant's that  
14 were involved in a much larger conspiracy to distribute cocaine, methamphetamine and heroin  
15 over a two-year period. Mr. Viera-Chirinos was surveilled on only two occasions in that two-year  
16 investigation which involved the Drug Enforcement Agency (DEA), San Francisco Police  
17 Department (SFPD) and the Richmond Police Department (RPD) receiving two small bags of  
18 drugs containing a white or light-colored substance from a Black Honda Accord outside his  
19 residence.

20  
21 Mr. Viera Chirinos is a self-admitted abuser of cocaine and admitted that his drug use was a  
22 factor in the commission of this offense. He sought drug counselling services after his arrest in  
23 2015. On the day officers executed a search warrant at his home they found in Mr. Viera-Chirinos  
24 in possession of cocaine. Mr. Viera-Chirinos clearly has a substance abuse problem that he has  
25 never received adequate help with.

26 The 31.4 grams of heroin found at his residence were attributed to Mr. Viera-Chirinos and he  
27

1 has accepted responsibility for that amount. The nature and circumstances of this offense are not  
2 so egregious that a sentence beyond time served is necessary and would be unduly punitive given  
3 the nature of the offense.

4 **A. The History and Characteristics of the Defendant, 18 U.S.C. § 3553(a)(1).**

5 Mr. Viera-Chirinos has no prior criminal convictions and only one arrest from August  
6 2015 involving the possession of a small quantity of cocaine. As explained above Mr. Viera-  
7 Chirinos has struggled with an addiction to cocaine since coming to the United States. In addition  
8 to his struggles with cocaine he suffers from diabetes and requires daily medication and a special  
9 diet. Before coming the United States, he lived a much simpler life in Honduras growing up on  
10 the family farm with his parents and six siblings. In his early 20s he was in a relationship with  
11 Lily Dorres and together they had two children, Danielle (age 15) and a Miguel (14). *See* Exhibit  
12 C. When the relationship ended, Mr. Viera-Chirinos, sought a fresh start in the United States  
13 where two of his brothers had also relocated to.

14 Mr. Viera-Chirinos remains in constant contact with his children and parents in Honduras and  
15 has continued that contact during his incarceration. His mother has been ill as of late and will  
16 soon undergo amputation of her leg. Mr. Viera-Chirinos is very close to his mother and is greatly  
17 anguished that he cannot be there for her in her time of need. His partner, Wendy Sandre, whom  
18 he met in the U.S has been a constant support for Mr. Viera-Chirinos during his incarceration and  
19 has ensured the communication lines have remained open with his family. She has been at every  
20 court appearance and was willing to act as a surety for bail. Mr. Viera-Chirinos was only in the  
21 U.S. for four years before his arrest and will be deported upon service of his sentence. He will  
22 likely also serve some additionally time in ICE custody before deportation.

23 Mr. Viera-Chirinos disagrees with the PSR's conclusion there are not any factors that would  
24

warrant a departure from the applicable sentencing guideline range. *PSR* ¶¶69 and 70. The nature and circumstances of the offense and the history and characteristic of the defendant all support a departure from the applicable sentencing guideline range under 18 U.S.C. § 3553, specifically:

- his family ties and responsibilities in Honduras;
- his drug dependency;
- the fact that he is a non-violent offender;
- his physical/medical condition diagnosis of diabetes;
- his remorsefulness; and
- his early plea in this case accepting responsibility.

**B. Deterrence Value of the Sentence and Protection of the Public from Future Crimes of the Defendant, 18 U.S.C. § 3553(a)(2)(B) and (C).**

Mr. Viera-Chirinos when released, is unlikely to pose a future threat to the community. He has no propensity for violence and will be deported to Honduras upon service of his sentence.

**CONCLUSION**

This court should impose a sentence that is sufficient, but not greater than necessary, to comply with the basic aims of sentencing. Given Mr. Viera-Chirinos minimal criminal record, the nature and circumstances of the offense, his self-admitted substance abuse problems and his almost certain deportation a sentence of time served is requested.

Dated: 12.11.19

Respectfully submitted,

By:                     /s/                      
 Karen McConville  
 Attorney for Julio Cesar Viera-Chirinos